

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB OCT. 19,99
U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Maylon E. Dickey d/b/a Double D Manufacturing Company
v.
Metro Industries

Opposition No. 103,832
to application Serial No. 74/663,702
filed on April 20, 1995

Michael E. Godar and Stuart N. Senniger of Senniger Powers
Leavitt & Roedel for Maylon E. Dickey.

Joseph E. Kovarik of Sheridan Ross & McIntosh for Metro
Industries.

Before Quinn, Walters and Bucher, Administrative Trademark
Judges.

Opinion by Bucher, Administrative Trademark Judge:

An application has been filed by Metro Industries¹ to
register the mark "E.C.G. Environmental Cleaning Granules"
(with the words "Environmental Cleaning Granules"
disclaimed) in the special form shown below:

¹ Metro Industries is a Colorado partnership composed of Judy
A. Wilkens and Gary N. Martin, both citizens of the United
States.

E.C.G.

Environmental Cleaning Granules

for "cleaning preparations, namely chemical free granular absorbent material of baked clay for use with patented cleaning equipment for absorption of liquid substances to include, but not limited to, oils, grease, transmission fluid, hydraulic fluid and anti-freeze," in International Class 3.²

Registration has been opposed by Maylon E. Dickey, a U.S. citizen, doing business as Double D Manufacturing Company, on the grounds that opposer is the owner of the previously used and registered mark "E.C.O." for "chemical-free absorbent granular mixture of baked clay and silicon sand for use by home owners, commercial business establishments, highway departments and fire departments in cleaning oil and grease spills on asphalt and concrete surfaces," also in International Class 3;³ that the goods of the respective parties are directly competitive, travel in the same channels of trade, and are intended for the same end uses; and that applicant's mark, as applied to

² Application Serial No. 74/663,702, filed April 20, 1995, alleging a date of first use anywhere on March 20, 1995 and first use in interstate commerce on April 5, 1995.

³ Opposer owns the following valid and subsisting registration: Reg. No. 1,805,710, for the mark "E.C.O.," issued November 23, 1993; §8 affidavit accepted and §15 affidavit received.

applicant's goods, so resembles opposer's previously used and registered mark as to be likely to cause confusion.

Applicant, in its answer, denied all the salient allegations of the opposition.

The record consists of the pleadings, the file of the opposed application, and the status and title copy of opposer's pleaded registration. Neither party filed a brief in this case.

Opposer has made of record a status and title copy of its pleaded registration and, accordingly, there is no issue with respect to opposer's priority. King Candy Co., Inc. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

We note from the respective identifications of goods that both parties are marketing absorbent granular clay materials for cleaning up petrochemical spills. Hence, we conclude that opposer is correct in alleging that the products are directly competitive, are advertised in the same media, travel in the same channels of trade, and are intended for the same class of potential and actual purchasers. Because nothing in the record supports a different conclusion, there is no doubt but that the parties' goods are substantially identical. The only issue before us then, is whether applicant's mark so resembles opposer's mark as to be likely to cause confusion. We find that confusion is likely.

We conclude that the marks "E.C.O." and "E.C.G. Environmental Cleaning Granules" are substantially similar in overall commercial impression. Both marks contain the letters "E.C.-.", differing only in the last letter of these three-letter strings. Both letter strings are composed of three, upper case letters - each letter followed by a period. Our principal reviewing court has held that arbitrary arrangements of letters should be given a wide scope of protection, given that the recall among purchasers is often hazy and imperfect under these circumstances:

On the issue that letters are confusing, this court also agrees with the Board. It is more difficult to remember a series of arbitrarily arranged letters than it is to remember figures. Dere v. Institute for Scientific Information, Inc., 420 F.2d 1068, 1069, 164 USPQ 347, 348 (CCPA 1970). See also Crystal Corp. v. Manhattan Chemical Manufacturing Co., 75 F.2d 506 (CCPA 1935); Edison Brothers Stores v. Brutting E.B. Sport-International, 230 USPQ 530, 533 (TTAB 1986). It is especially hard to distinguish between TMS and TMM when the marks only differ by the last letter. Because it is hard to distinguish between these letters, the mark TMM is confusing with TMS.

Weiss Associates Inc. v. HRL Associates Inc., 902 F.2d 1546, 14 USPQ2d 1840 (Fed. Cir. 1990).

The predominant portion of applicant's mark, the letter string "E.C.G.," appears to be, in applicant's composite mark, an abbreviation for "Environmental Cleaning Granules." However, under the circumstances of the instant case, that fact does not diminish the likelihood of confusion between

opposer's mark and a similar mark for directly competitive, if not identical, goods. In reviewing the file of the opposed application, we note that applicant does not contend that "E.C.G." has any significance in the relevant trade. There is no evidence in the record to warrant a conclusion that members of the consuming public would use the initialism "E.C.G." interchangeably with the descriptive designation, "Environmental Cleaning Granules."

Furthermore, although it is not proper to dissect a mark, our principal reviewing court recognizes that one feature of a mark may be more significant than other features, and that it is proper to give greater force and effect to that dominant feature. See Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1565, 218 USPQ 390, 395 (Fed. Cir. 1983). "Environmental Cleaning Granules" names the goods and was readily disclaimed by applicant during *ex parte* prosecution. The words "Environmental Cleaning Granules" are presented in a smaller font than the "E.C.G." letters and are located below the much larger "E.C.G." initialism. Hence, this matter plays a less significant role in creating the overall commercial impression of applicant's mark.

Finally, as has been stated in prior cases, a lesser degree of similarity between two parties' marks is required when, as here, the marks are applied to identical goods.

See In re Concordia International Forwarding Corp., 222 USPQ
355 (TTAB 1983).

Decision: Accordingly, the opposition is hereby sustained and registration to applicant is refused.

T. J. Quinn

C. E. Walters

D. E. Bucher
Administrative Trademark
Judges, Trademark Trial
and Appeal